

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
THE FRAME FACTORY, INC., )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

PCHB No. 955

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a violation order relating to an automobile catalytic converter, came before the Pollution Control Hearings Board (Chris Smith, Chairman, and Walt Woodward) as a formal hearing in the Spokane facility of the State Department of Labor and Industries on April 7, 1976.

Appellant was represented by its owner, Gary P. VanCleve; respondent appeared through Joseph J. McGoran, Assistant Attorney General. Dave Caviezel, Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

1 Closing arguments were made.

2 Having heard the testimony, having examined the exhibits, having  
3 considered the arguments, and the Board having received exceptions to  
4 its proposed Order, said exceptions being denied, the Pollution Control  
5 Hearings Board makes the following

6 FINDINGS OF FACT

7 I

8 Appellant, doing business in Spokane, is the lessee of a 1975  
9 Chrysler Cordoba automobile, serial number SS22K5R1864. It was equipped  
10 at the factory with a catalytic converter in order to meet federal  
11 automobile exhaust emission regulations.

12 The catalytic converter caused a "rotten egg" sulfur odor in the  
13 automobile sufficiently noxious to cause a passenger to vomit. The  
14 vehicle was taken to its lessor where, on two occasions, attempts were  
15 made to lessen the odor. They were not successful to appellant's  
16 satisfaction. Lessor, requested by appellant to remove the catalytic  
17 converter, refused on grounds that it was illegal for lessor to do so;  
18 lessor advised appellant that appellant could remove the device.

19 Assuming that this advice was correct, appellant, in February, 1975,  
20 had the catalytic converter removed at a muffler shop. Appellant  
21 testified that had he known it was illegal to remove the device he  
22 would not have done so.

23 Late in March, 1975, appellant learned from television news  
24 broadcasts that it was illegal to have a federally-required catalytic  
25 converter removed. Appellant did not have the device reinstalled and  
26 continued to operate the automobile without it.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

II

Pursuant to a complaint, respondent, in October, 1975, verified the information outlined in Finding of Fact I. On November 21, 1975, respondent served on appellant Notice of Violation and Order, Docket No. DE 75-206. The document was issued pursuant to RCW 70.94.332 and cited violation of RCW 70.94 and WAC 18-24-040.

No penalty was invoked for the alleged violation. The Order was an alternative one. Appellant was directed either to reinstall a catalytic converter or cease using the automobile within two weeks of receipt of the document.

The Notice and Order is the subject of this appeal.

III

Appellant contends the federal automobile exhaust emission regulations are discriminatory. He contends, but did not prove, that his leased automobile meets federal emission regulations with the catalytic converter removed. He contends, but did not prove, that catalytic converters "do not work."

IV

Noxious, sulfur odors caused by faulty adjustments of catalytic converters can be prevented or minimized.

V

Any Conclusion of Law hereinafter recited which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 This Board does not have the authority to rule on appellant's  
4 contention of law that the federal automobile exhaust emission  
5 regulations are discriminatory. Appellant has a process available to  
6 him to test that contention but this Board is not the proper forum in  
7 which to raise that issue.

8 This Board's sole function and authority in this matter is to  
9 determine the validity or invalidity of respondent's Notice of  
10 Violation and Order, Docket No. DE 75-206.

11 II

12 The basis of that Notice and Order is WAC 18-24-040, which states:

13 STANDARDS OF MOTOR VEHICLES. No person shall remove or  
14 render inoperable any devices or components of any systems  
15 on a motor vehicle installed as a requirement of federal law  
16 or regulation for the purpose of controlling air contaminant  
17 emissions, subject to the following conditions:

18 (1) The components or parts of emission control systems  
19 on motor vehicles may be disassembled or reassembled for the  
20 purpose of repair and maintenance in proper working order.

21 (2) Components and parts of emission control systems  
22 may be removed and replaced with like components and parts  
23 intended by the manufacturer for such replacement.

24 (3) The provisions of this section (WAC 18-24-040)  
25 shall not apply to salvage operations on wrecked motor  
26 vehicles when the engine is so damaged that it will not be  
27 used again for the purpose of powering a motor vehicle on  
a highway.

28 III

29 WAC 18-24-040 is a valid regulation promulgated pursuant to  
30 RCW 70.94.331; it is within the statutory authority granted thereunder  
31 and consistent with the policy of the Washington Clean Air Act expressed  
32 in RCW 70.94.011.

33 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 IV

2 Appellant was in violation of WAC 18-24-040, as cited in Notice  
3 of Violation and Order, Docket No. DE 75-206. While it is true that  
4 appellant did not know of WAC 18-24-040 in February, 1975, when he had  
5 the catalytic converter removed, by his own testimony he did learn the  
6 essence of that regulation in March, 1975, and did not have the  
7 wrongfully-removed device reinstalled. We conclude that appellant had  
8 ample knowledge and time to avoid violation yet did nothing.

9 Respondent acted properly in citing appellant after receiving a  
10 complaint and after ascertaining facts to substantiate the violation  
11 notice. Respondent would have been derelict in its duty had it not  
12 taken the action which it did.

13 V

14 The Order portion of the appealed document is authorized in  
15 RCW 70.94.332 which says in part:

16 Whenever the department has reason to believe that any  
17 . . . regulation adopted by the state board . . . under  
18 RCW 70.94.410 relating to the control or prevention of air  
19 pollution has been violated, it may . . . include an order  
20 that necessary corrective action be taken within a  
21 reasonable time. . . .

22 VI

23 The terms of the Order are reasonable.

24 VII

25 Respondent, which could have invoked a civil penalty of \$250  
26 in this matter, exercised leniency by not doing so.

27 VIII

28 We conclude that, in all respects, Notice of Violation and Order,  
29 FINAL FINDINGS OF FACT,  
30 CONCLUSIONS OF LAW AND ORDER 5

1 Docket No. DE 75-206, properly cited an established violation, was  
2 reasonable and lenient and was not arbitrary or capricious. It should  
3 be upheld by this Board.

4 IX

5 Any Finding of Fact herein recited which is deemed to be a  
6 Conclusion of Law is adopted herewith as same.

7 Therefore, the Pollution Control Hearings Board issues this

8 ORDER

9 The appeal is denied and Notice of Violation and Order,  
10 Docket No. DE 75-206 is sustained.

11 DONE at Lacey, Washington, this 4th day of June, 1976.

12 POLLUTION CONTROL HEARINGS BOARD

13 Chris Smith  
14 CHRIS SMITH, Chairman

15 Walt Woodward  
16 WALT WOODWARD, Member  
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